Indiana R. Co. v. *Hoffman,* 161 Ind. 593, 69 N. E. 399; *Peterson* v. *Tacoma Ry. etc. Co.,* 60 Wash. 406, 140 Am. St. Rep. 936; *People* v. *Detroit United Ry.,* 162 Mich. 460, 139 Am. St. Rep. 582.

MUNICIPAL CORPORATIONS—NOT LIABLE FOR MISUSE OF STREETS BY INDIVIDUALS.—Plaintiff's intestate, while driving along the public street of the defendant town, was struck by a baseball, which inflicted injuries causing his death. Boys had been accustomed to play ball in the streets for two years, and although this was known to the police officers of the town, no effort was made to stop it. *Held,* "it is immaterial whether the plaintiff founds her claim upon the failure to enact an ordinance prohibiting baseball on the streets, or upon the failure to enforce such an ordinance. The municipality would not be liable for the negligence of officers, because the act is governmental in its nature, and the corporation is as much exempt from suit in such cases as the state itself." *Goodwin* v. *Town of Reidsville* (N. C. 1912) 76 So. 232.

A municipal corporation exercises functions that are two-fold, governmental and private. In the exercise of the latter it is subject to suit, in the former it is not. *Jones* v. *Williamsburg,* 97 Va. 722, 34 S. E. 883, 47 L. R. A. 294; 29 CYC. 1356. Failure to pass an ordinance prohibiting certain uses of the public streets is generally held not actionable. *Jones* v. *Williamsburg, supra; Lafayette* v. *Timberlake,* 88 Ind. 330. The contrary has been held, *Cochrane* v. *Mayor of Frostburg,* 81 Md. 54, 31 Atl. 703, 48 Am. St. Rep. 479, 27 L. R. A. 728, upon the theory that this duty is imperative, not legislative or discretionary. Failure to enforce such an ordinance is generally held not actionable. *Addington* v. *Littleton,* 50 Colo. 623, 115 Pac. 896, 34 L. R. A. (N. S.) 1012, Ann. Cas. 1912 C. 753; *Marth* v. *Kingfisher,* 22 Okla. 602, 98 Pac. 436, 18 L. R. A. (N. S.) 1238; *Dudley* v. *Flemingsburg,* 115 Ky. 5, 72 S. W. 327, 60 L. R. A. 575, 103 Am. St. Rep. 253, 1 Ann. Cas. 958; *Norristown* v. *Fitzpatrick,* 94 Pa. 121, 39 Am. Rep. 771; *Contra, Hagerstown* v. *Klotz,* 93 Md. 437, 49 Atl. 836, 54 L. R. A. 940; *Taylor* v. *Mayor,* 64 Md. 68, 54 Am. Rep. 759.

PARENT AND CHILD—LIABILITY OF PARENT FOR NON-SUPPORT—NON-RESIDENT.—Petitioner was indicted under the Ohio statute for failure to provide for his minor child, and filed a petition for a writ of *habeas corpus,* alleging that he then was, and always had been, a resident and citizen of the state of Kentucky, and on that ground claimed that the court indicting him had no jurisdiction of the offence. *Held,* that since the child was in the state of Ohio, the courts of that state had jurisdiction to indict for the failure to provide; and that whether or not the petitioner is guilty cannot be determined on a petition for a writ of *habeas corpus.* Petition dismissed. *In re Poage* (Ohio 1912) 100 N. E. 125.

The case of *State* v. *Ewers,* 76 Ohio St. 563, 81 N. E. 1196, held that the defendant was not guilty of the offence of abandonment, because he had resided in the State of Indiana during the time laid in the indictment. Subsequently, the statute was amended as follows: "The offence shall be held to have been committed in any county in this state in which such child * * *

may be at the time the complaint is made." *State* v. *Sanner*, 81 Ohio St. 393, 90 N. E. 1007, 26 L. R. A. N. S. 1093, held that under this amendment it was not necessary to allege in the indictment that defendant was a resident of the state. The decision in the principal case is based almost entirely upon the holding in *State* v. *Sanner, supra*. In the report of that case in the L. R. A. (*supra*), there is the following note:—"A search has disclosed no other cases upon the criminal responsibility of one who fails to support his wife or children, as affected by the fact that he was a non-resident of the state during the time laid in the indictment." There are decisions, however, to the effect that the *county* where the child is located has jurisdiction of the offence, although the accused has never been in said county. *Bennefield* v. *State*, 80 Ga. 107, 4 S. E. 869; *Johnson* v. *People*, 66 Ill. App. 103. Physical presence within the jurisdiction is not indispensible to the commission of a crime. *Burton* v. *United States*, 202 U. S. 344; *Lindsey* v. *State*, 38 Ohio St. 507; 12 CYC. 237. It is therefore submitted that the decision in the principal case would have been right, even in the absence of the statutory amendment mentioned above. On the question of jurisdiction in cases of wife-abandonment, see 10 MICH. L. REV. 647.

SALES—DAMAGES FOR DELAY IN DELIVERY NOT WAIVED BY ACCEPTANCE OF THE GOODS.—In an action for the contract price of an engine the defendant counterclaimed for damages due to failure to deliver it within the agreed time. He alleged knowledge of the plaintiff that the engine was for a specific use and that failure to deliver it on time would tie up the defendant's business. The plaintiff demurred; and was sustained by the trial court. *Held*, that acceptance of the engine did not of itself waive the right to damages resulting from the delay in delivery. *Carson-Muse Lumber Co.* v. *Fairbanks, Morse, and Co.* (Ky. 1913) 152 S. W. 256.

The buyer may even request delivery in such cases, without waiving the breach. *Buick Motor Co.* v. *Reid Mfg. Co.*, 150 Mich. 118. Acceptance is not necessarily a waiver. *Perry Tie Co.* v. *Reynolds*, 100 Va. 264; *Berger* v. *Henry Huber Co.*, 100 N. Y. Supp. 1029; *Fairbanks, Morse & Co.* v. *Wills*, 159 Ill. App. 241; WILLISTON, SALES, § 487; and notes 54 L. R. A. 718; 7 L. R. A. (N. S.) 1114. And this is true even when circumstances do not compel the buyer to accept the goods in order to escape further damage to his business. *Redland Orange Growers' Assoc.* v. *Gorman*, 161 Mo. 203. Acceptance alone is not evidence of a waiver (*semble*) *Johnson* v. *Glass Co.*, 74 Kan. 762, but is *some* evidence. *Hansen* v. *Kirtley*, 11 Ia. 565. It is *prima facia* evidence, though rebuttable. *Murmann* v. *Wissler*, 116 Mo. App. 397; *Merrimack Mfg. Co.* v. *Quintard*, 107 Mass. 127. *Contra*, that acceptance is a waiver, *Fraser* v. *Ross*, 1 Penn. (Del.) 348; unless a reservation of the right to damages is made at the time, *Minneapolis Threshing Machinery Co.* v. *Hutchins*, 65 Minn. 89. It does not appear in the last two cases how necessary the goods were to the buyer when they did arrive. A stipulation that acceptance shall waive the right to damages resulting from delay is valid and binding. *Victor Chemical Works* v. *Hill Clutch Co.*, 152 Fed. 393, 81 C. C. A. 519.